

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:04-cr-267-01

v.

HONORABLE PAUL L. MALONEY

KENDALL JOSE HACKNEY

Defendant.

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MEMORANDUM OPINION AND ORDER

Defendant Kendall Jose Hackney has filed a motion for modification or reduction of sentence pursuant to 18 U.S.C. §3582(c)(2) based on the modification of the Drug Quantity Table with respect to cocaine base (crack cocaine).

Section 3582(c)(2) permits a court to reduce the term of imprisonment of a defendant who has been sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). Amendment 750 of the United States Sentencing Guidelines modified U.S.S.G. § 2D1.1, the Drug Quantity Table with regard to cocaine base (crack cocaine), and U.S.S.G. § 2D2.1(b). These modifications were made retroactive effective November 1, 2011. U.S.S.G. § 1B1.10(c).

A review of this case reflects the defendant entered a guilty plea in February 2005 to Count 1, possession with intent to distribute cocaine base and Count 2, possession of a firearm in the furtherance of a drug trafficking crime. The defendant's original guideline range was calculated to be 235 to 293 months on Count 1, plus 60 months consecutive on Count 2. The

sentencing Court varied downward 4 levels, opining the scoring of cocaine base was too harsh and typically resulted in too punitive of a sentence considering the statutory purposes of sentencing. The defendant ultimately received a sentence of 156 months on Count 1, plus 60 months on Count 2.

According to the Sentence Modification Report prepared by the United States Probation office, the defendant appears eligible for a sentence reduction. After application of Amendment 750, the amended guideline range is 188 to 235 months on Count 1, plus 60 months consecutive on Count 2. After consideration of the briefs filed by the parties in response to the probation report, the Court has determined the defendant is ineligible for a reduction of sentence because the defendant's actual sentence of 156 months is below the minimum of the amended guideline range of 188 months. See *United States v. Berberena*, 694 F.3d 514 (3rd Cir. 2012).

Accordingly,

IT IS HEREBY ORDERED that Defendant Kendall Jose Hackney's motion for modification of sentence pursuant to 18 U.S.C. § 3582(c)(2) (ECF No. 48) is **DENIED**.

Date: December 21, 2012

/s/ Paul L. Maloney

Paul L. Maloney

Chief United States District Judge